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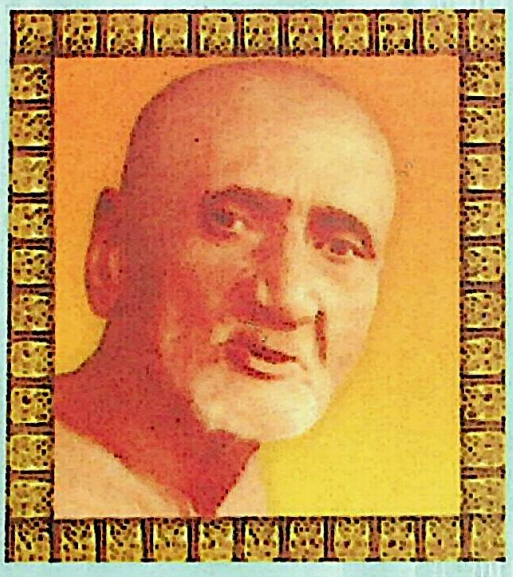
UPSARG NIVARAN
(उपसर्ग निवारण)



Dedicated to
Shri 108 Acharya Shri Shantisagar Ji Muniraj
'The Ocean of Peace'

Publisher
KUND KUND BHARTI TRUST
New Delhi-110067

Ganesh Varni Digambar Jain Institute, Naria, Varanasi

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UPSARG NIVARAN

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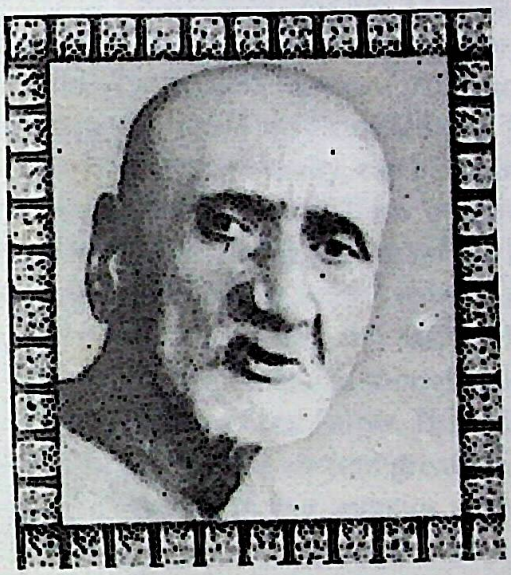

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PREFACE

I realise that Digambar Jain Community at large should be acquainted with the contents of the famous Judgement of 1942 concerning the **'Upsarg Vimochan'** of Shantisagar Muniraj & his disciples. The Judgement upheld the dignity and honour of Digambar Muni (Saints) along with the Principle of **Ahimsa.** The survival of **Jains,** a minority community, can be attributed to the glorious and continuous traditions of Jain Acharyas. Jainism teaches that the highest moral life leads to the elevation of soul and its eventual emancipation, from the cycle of birth and death, the **MOKSHA** supreme bliss. We, the worldly creatures should make all efforts to protect the dignity of our Saints. This will provide a sense of gratitude to our ancient great religon. It will also be great service to our ascetics who follow the religious path.

Emperor Priyadarshi ASHOKA during his regime, appointed Senior Ministers to take care of Nirgranthas (Digamabr jain saints, who were devoid of wordly possessions). The great ruler, who was considered the beloved of the Gods said in one of his sermons, when he became a Boudh bhikshu, that they who worship Nirgranthas also worship God.

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Acharya Shantisagar Muniraj was the first digambar Acharya of the 20th century (1872-1955). He was the incarnation of the Wisdom and Peace. I had the honour to stay with him for thirteen years and learnt much from his valuable experience. His association gave me immense peace and inner happiness.

The Great Acharya preferred to be the disciple of the 'Learned' rather than Guru of the 'Ignorant'. His dictum was 'Don't eat sugarcane being an elephant, but be an ant and remain satisfied with sugar crystals.' One should be ambitious but not greedy and over-ambitious.

G. Vhelara, the great revolutionary of Poland, advocated 'Freedom of Language' for the existence of a country, while our great Acharya advocated 'Freedom of Religion'.

Prof. Lother Wendel, a German scholar, called Acharya Shantisagar Muniraj 'A Transcendental Saint'. The great muniraj beamed with an inner light, which seemed to be without shadow. He was infact a cosmical man, whose life on this planet seemed to be a short interval. In fact, what we are today, is only due to him.

—AACHARYA VIDYANAND MUNI
16th June 2007

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In the court of the Resident Magistrate First Class Pandharpur

Criminal Case No.19 of 1942 **Ex. 61**

Crown

Vs.

(1) Shankar Raghunath Ghogardare
(2) Mahaniraj Trimbak Khisti
(3) Bhojraj Sambhajirao Deshmukh
(4) Pralhad Shankar Bharte
(5) Shankar Hari Bharte
(6) Ranchandra Hari Bharte
(7) Tukaram Maruti Changan
(8) Dattoo Shivanath Hendre
(9) Hari Malu Sorte
(10) Kashinath Govind Ingole
(11) Gulab Ranu Bagwan
(12) Vithal Pandurang Urade
(13) Vasant Murlidhar Bharte
(14) Mahadev Sambhu Teli

All of Natepute.

Offence:— Sections 147, 296, 298, 152, or 353 read with S.34 I.P.C.

JUDGEMENT

The prosecution story is briefly as under :—

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The village of Natepute in Malsiras Taluka has got a considerable population belonging to the Digambar Sect of the Jain religion and there is a Jain temple there belonging to Digambar Jains. The present religious head or Guru of the **Digambar Jains – Shri 108 Acharya Shantisagar Muni Maharaj** with one more Muni and his desciples intended to visit Natepute and to take the Darshan of the deity in the Jain temple in the morning of 24th December 1941. Prior to 24th December 1941 the Muni was camping at Dahigaon, a village nearly. Some Jains of Dahigaon on coming to know the Muni's intention to go to Natepute and to take the Darshan of the deity in the Jain temple there presented an application to the Sub-Insepector of Police Malsiras, who was camping at Akluj that day informing him of the intended visit of the Muni to Natepute and to the temple there in the following morning. This they apparently did in view of some trouble, that had taken place at the time of some other Jain Muni's visit to Natepute in 1938 on account of the Muni's moving about in nude condition. The Police Sub-Insepector on getting the application went to Malsiras -his head quarters- and issued orders to his subordinates to proceed to Natepute for Bandobast in connection with the visit of the Muni to Natepute and going through the streets to the temple. Accordingly a number of police constables and some Head Constables went to Natepute for Bandobast. The Police Sub-Insepector himself also went the same night. Many people belonging to the Digambar

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Sect of the Jains from various places had gone to Natepute in connection with the visit of the Jain Muni to the temple that day. seeing all this and in view of the trouble that had taken place in connection with the Muni's visit to Natepute on the pervious occasion, the Sub-Insepector and his subordinate police officers went in the early morning of 24th to the Motor-stand, which is by the side of the main Pandharpur Mahad road, by which road the Muni and his followers were to arrive to Natepute from Dahigaon. The road to the Jain temple branches off from this main road at this Motor-stand and so the Police decided to stand there near the Motor-stand, as the Muni and his followers would enter the town at that point only. The villagers of Natepute began to gather there at about 8 am. All the accused. Who are all Non-Jains also had come there and were among those people. The accused as well as some other people had black flags in their hands. The Muni and his followers had not yet arrived to Natepute when these people came there. On seeing that a large number of Non-Jain had gathered there and that some of them had black flags in their hands, the Sub-Insepector in order that there should be no trouble of any kind or any breach of peace called up accused numbers 1,2,& 3,who are the leaders of the local non-jains, and told them that if they could not tolerate the moving about or going through the streets of the Jain Muni in a naked condition, they should better go home but should not indulge in anything likely to result in a breach of the

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peace and that the Jain Muni was to be there for a short time only and was to go back within an hour or so after taking the Darshan. At that accused Nos 1&2 assured the Sub-Inspector that they (the accused) would not commit any rowdy act but would quietly stand there and would only display black flags to the Muni by was of expressing their disapproval of and protest at the Muni's moving about and parading himself through publice streets in a naked condition. The Police Sub-Insepector there-upon asked the people who were carrying black flags in their hands to go aside and to stand by the side of the road at some distance. They thereupon went a little aside towards the East and stood there under a Nimb tree. The Police Sub-Insepector then posted his Police in line along the road in front of these men. The Jain Muni and his followers came to Natepute by about 9 A.M. from Dahigaon. Many Jains from among those that had assembled at Natepute went to receive him. They met the Muni at the point where the road from Dahigaon meets the main Pandharpur-Mahad road in the North-West direction. The Muni was worshipped there at that point by the Jains and the Muni started for going to the Jain temple, accompanied by a large number of Jains. Which numbered about 300 to 400. There was, as if a procession going on. The Jain were shouting "Jays" such as "Shantisagar Maharaj Ki Jay". When the Muni and his followers approached the motor-stand and were about to join the street that passes through the town of Natepute in the Southern direction

RESIDENT MAGISTRATE FIRST CLASS
PANDHARPUR

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for going to the Jain temple, which is situated practically at the extreme Southern end of the town all the accused who carried black flags began to shout out slogans like जैन धर्माचा नाश होवो, हाणण्या मुनीचा धिक्कार असो. हाणण्या बुल्लीचाधिकार असो, जैन धर्माचा धिक्कार असो. On seeing this some of the Jains formed themselves into a circle around the Muni and they placed themselves on all sides of the Muni in the procession, in front of him, behind him and on both sides of him. Some of the accused indulged in making an outray by bellowing and beating the mouths by the hand (बोंब). Some of them threw eggs at the Muni, but the eggs missed him and fell on some other men. They then began to come forward towards the steet. The Police on seeing this turned their faces towards the black flaggers and formed a cordon by holding each other's arms with a view to prevent those people from rushing into the Jain Processionist. These accused and one more man Gopal Chintaman Paithankar, who is now absconding, rushed forward, broke the police cordon and rushed among the Jain processionists and began to mishandle the Jains. They continued shouting the above mentioned slogans. The police under the Police Sub-Inspector apprehending from all this that there would be serious trouble and a breach of peace tried to take these 15 men out of the Jain processionists. Those 15 men began to resist the attempt of the police to take them out of the crowd of the Jains and to struggle with them. In this way the accused and the police, struggling with each other, went

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to the other side of the road in front of a building in which there are some tea shops and the "Pan-Bidi-Shop" of one Anusayabai. At that point accused no. 4 Pralhad gave one blow with the stick of his black flag to the Police Sub-Inspector Mr. Deshamukh on his right shoulder and was about to give him another blow but the Police Sub-Inspector raised his right hand and the blow fell on his right hand fingures, accused no. 5 held the Police Sub-Inspector by his waist. Accused nos. 1 & 2 held his hands and struggled with him. The Police Sub-Inspector's head dress a Fatique cap-fell on the ground as a result of all this. The Head Constable Sultan Hussain, on seeing that the Police Sub-Inspector was being mishandled, tried to go to his help. Accused No. 13 Vasant gave the Head Constable a blow with his fist and some other accused gave him a blow with stick on his back. As the Police Sub-Inspector and the Head Constables were thus being assaulted the other policemen went to their help, but some of them also were mishandled by some of the accused. Constables Namdev Maruti and Mahamad Auzbeg got some beating and the shirt (Dagala) of the constable Namdev was torn at one end. The other police and some men from the public came to the help of the Police Sub-Inspector and rescued him. The Police Sub-Inspector then detained acceded no.4 Pralhad and got a handcuff from the Police Chauki and handcuffed him and sent him to the Police Chauki. The Muni and his followers had by this time gone ahead accompanied by some of the policemen.

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Some of accused also went after the procession shouting the same slogans and some went ahead of the procession through by lanes. They stood on the Katta of Shri Ram temple which is in front of the Jain temple. Accused nos. 1&2 and some others were there. There also, they indulged in shouting the slogans. Some more eggs were thrown at the Jain processionists from there. Some of accused had gone from the motor stand after throwing away their black flags there. The Police Sub-Inspector kept some Ramoshis there to guard the black flags and the pieces of broken eggs and to maintain the state of things and then went towards the Jain temple. On the way to the temple by which the procession had gone a dead rat (घूस) was noticed by him lying on the road near the shops of accused Ghogardare and of one Hingangaokar. Its intestines were protruding and blood had come out. The Jain Muni had gone in the Jain -temple by the time the Police Sub-Inspector went there near the temple. After taking the Darshan and stopping in the temple for some time, the Jain Muni and his followers went back by the same road under police bandobast up to the Motor stand and then the Muni went on by the Phaltan road. The Police Sub-Inspectors then recorded- the statement of the Head Constables Sultan Hussain, by way of complaint and got the offence registered. Then he started investigation and drew up Panchanamas about the scene of the offence, about the pieces of eggs lying on the road near the motor- stand and about the dead rat, about

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the broken eggs that were found in front of the Jain temple, and also about the injuries on the persons of some of the police men. As there is no dispensary at Natepute, he showed his injuries on his fingurers and shoulder to Dr. Vora, a Jain Medical Practitioner from Pandharpur, who had gone there for having the Darshan of the Muni, Dr. Vora told the Police Sub-Inspector that the injuries were slight and advised application of Iodine only. The Police Sub-Inspector arrested accused nos.5 to 13 and also the absconding accused Paithankar at about 11 A.M. and number 1,2,& 3 at bout 4 P.M. that day. As it transpired in the investigation that there was sufficient evidence against the last accused Mahadu Teli, The Police Sub-Inspector, also reported the incident to his Superiors immediately and the Sub-Divisional Police Inspector visited Natepute on the next day, the 25th and made inquires on the spot. At the time of arrest to the accused, the P.S.I. noticed that there were some injuries on the persons of accused Pralhad and Ramchandra. The P.S.I. drew up a panchanama about them and asked them if they would like to be treated but they told him that they did not want any medical treatment. As there is no medical dispensary at Natepute the P.S.I. sent the constable Sultan to a Local Private Medical Practitioner Dr. Kale, who, however, refused to treat him. The Medical Officer, I/C Akluj dispensary was on leave and as the injuries on the Head Constable's person were of a minor nature he was not sent either indapur or Pandharpur as both these

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places are at a distance of forty of forty-two miles from Natepute. On completing the investigation the P.S.I. submitted a charge sheet against all the accused and also against Paithankar under Sections 145, 147, 149, 152, 353, 296, & 298 I.P.C. to the Court of the Magistrate F.C. Malsiras Taluka on 27.12.1941. It was taken by the Sub-Divisional Magistrate F.C. Pandharpur Division in his own file on 12.1.1942 and it was transferred to the court of the Magistrate F.C. Taluka Pandharpur and against it was transferred to the court by the District Magistrate, Sholapur on 9.7.42 under the orders of the High Court 11.7.1942. As accused no.15 Paithankar had absconded, it was decided to proceed against accused nos.1 to 14 only.

As against the above story of the Prosecution, the accused have categorically denied having committed any of these offences. Accused nos.1,2,3,5,6,7,8,9,10, 11,12,13,14, however, admitted that they had gone to and were present at the motor stand when the procession came there, for going to the Jain temple through the public street that is at the time of the alleged offence, but contended that they did nothing there beyond displaying black flags to the Jain Muni by way of protests against his going in procession in a naked condition and that they displayed the black flags only with the object that if no protests were shown, the present procession would have formed a bad precedent and would initiate a

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bad practice. Accused no. 4 had stated that he had gone at about 9 A.M. i.e. at the time of the alleged offence to one Bhaya's Hotel for taking tea as usual, that he started for going home after the procession had gone towards the temple, that though he had no concern with the procession the P.S.I. beat him without any reason and put him under arrest. Accused no. 6 Ramchandra says that on the day in question, he was in the bazar, that he came to know there at about 11 A.M. that the Police had taken accused nos.4 Pralhad no. 5 Shankar and no. 13 Vasant, who are his relatives, to the Police Chauki and so he went to the Police Chauki for making enquiries about them and that the P.S.I. asked him as the why he had arrived there, abused and beat him without any reasons and put him under arrest.

Accused nos.1,2,& 3 have further stated that last year one Ramchandra Dhanaji Dawda and some other Gujars were prosecute for an offence under section 395 I.P.C. and were convicted and sentenced for it in November 1940 and that the Jains believe that accused nos. 1, 2, & 3 had taken prominent part in securing evidence etc. in that case, that accused Ramchandra Dhanaji Dawda is a very rich and influential man among the Jain Gujar Community and that with the object of taking revenge for his conviction and sentence, the Jain Gujar witnesses have deposed false things and that the Jains have concocted this false case with a view to take revenge on

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them as they (accused nos. 1, 2, & 3) always take leading part in opposing the unrestricted movements of the Jain Muni in a naked condition. Though the accused have not stated in their statements openly to that effect, the Defence pleader contended that this is an absolutely false case engineered by the P.S.I. Mr. Deshamukh, with the help of the Jain witnesses and the police patil, that the Jain Muni had only a few days prior to this incident, camped at Natepute and yet did not visit the temple, that the Muni then went to Baramati, that while he was camping there, the P.S.I. Mr Deshmukh purposely went there and invited the Muni to visit Natepute again and assured him that if he (the Muni) would again visit Natepute, he would make necessary Bandobast and would see that his movements are not interfered with and that the application at Ex. 2-A was subsequently taken to serve as a basic for manufacturing the false case and that the whole prosecution evidence including the various panchanamas at Exts. 21-A, 21-B, 22-B,etc. are false. the defence pleader urged that all the accused except Nos. 4 & 6 displayed black flags only and that displaying black flags is now-a-days a recognized way of showing protest and that in doing so these accused did not commit any offence. He further urged that as the Muni was himself committing an offence in parading himself through a publice. Street in a naked condition and that as the other Jains were abating him in committing that offence, if was the duty of the Sub-Inspector to stop them from

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committing those offences that the Jains had no collective right of performing religious ceremonies in a public street and that therefore even supposing for the sake of argument, without admitting, that the prosecution case is true, the P.S.I. can not be said to have been acting in the discharge of his publice duty, when he was making Bandobast at the procession and the accused can not be said to have formed an unlawful assembly or to have committed the offences under 152 or 353, and Sections 296 & 298 I.P. Code.

A charge under sections 147, 296, & 298 I.P.C. has been framed against all the accused and a charge under section 152 or 353 I.P.C. has been formed against accused Nos. 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, & 14 and a charge under sections 152 or 353 read with section 35 of I.P.C. has been framed against accused Nos. 8 & 9 additional.

The points of determinations are:— Section 147 I.P.C.

(1) Where the accused, who numbered 14 and one Paithankar assembled near the Motor-stand at Natepute at the time of the alleged offence?

(2) If so was such assembly, when it was convinced, or subsequently become, unlawful having any of the five objects specified in section 141 I.P.C. viz.(I) to voluntarily cause disturbance to an assembly of

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Digambar Jain people, lawfully engaged in the performance of religious ceremonies and (ii) to utter words in the hearing of the persons forming that assembly consisting of Jain Munis and his followers and to make gestures in their sight with the deliberate intention of wounding their religious feeling ?

(3) If so, was this object the common object of all the accused who composed the assembly?

(4) If so, was force or violence used by the unlawful assembly or any member thereof?

(5) If so, was force or violence used in furtherance of the common object of such assembly?

Under section 296 I.P.C.

(1) Did the accused cause any disturbance?

(2) If so, was such disturbance caused to an assembly lawfully engaged in a religious ceremony?

(3) If so, was such disturbance caused voluntarily and in furtherance of the common object of the unlawful assembly?

Under section 298 I.P.C.

(1) Did the accused utter any words and make any gestures in the hearing and in the sight of the assembly of Digambar Jains at Natepute as alleged

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(2) If so, did the do so, intending to wound the religious feelings of that assembly of Digambar Jain and in furtherance of the common object of the unlawful assembly?

(3) If so, was such intention deliberate?

Under section 152 I.P.C.

(1) Was there a lawful assembly?

(2) If so, was an endeavour being made to disperse it?

(3) If so, were the P.S.I. of Malsiras and his Jamadar Sultan Hussain and the other Police officers under the P.S.I. who endeavoured to disperse it, public servants?

(4) If so, were the P.S.I. and the Police Jamadar and the other Police Officers acting in the discharge of their public duty as such public servants when they were endeavouring to disperse the unlawful assembly?

(5) If so, did the accused nos.1 to 7 and 10 to 14 assault or obstruct the P.S .I. or the Police Jamadar Sultan Hussain and other police officers subordinate to him & are the accused nos. 8 & 9 liable for it under section 35 I.P.C.?

(6) If so, was such assault or obstruction in furtherance

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of the said common object of the unlawful assembly?

Under section 353 I.P.C.

(1) Are the Sub-Inspector of Police Malsiras his Jamadar Sultan Hussain and the other subordinate Police Officers who were doing the Bandobast at the procession at Natepute at the time of the alleged offence public servant?

(2) If so, did accused nos. 1 to 7 and 10 to 14 assault or use Criminal Force to such public servants as alleged?

(3) If so, did these accused assault or use Criminal Force to the Police Sub-Insepector, the Jamadar and other police officers while they (the police officers) were acting in the execution of their duty as such public servants? & was such assault or use of Criminal Force in furtherance of the common object of the unlawful assembly?

(4) If so, are accused nos. 8 & 9 liable for it under section 35 I.P.C.?

My finding on all these above point is in the affirmative for the following reason.

26 witnesses have been examined on behalf of the prosecution in this case including the investigating police

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officers, Mr. Deshamukh, who was the Sub-Inspector of Police Malsiras then of these 8 are police officers, who were on duty for bandobast at the procession in question, one is the Police Patil of Natepute, 10 are members of Jain community from different places such as Natepute, Phaltan Akluj, Pandharpur etc. who were present there in the procession at the time of the alleged offence and the remaining 7 witnesses are people from the adjoining villages, who had come to Natepute on that day either for the weekly bazar, which was held that day, or some other business of their. All these witnesses have generally borne out the prosecution case. As against this, the accused as already stated, deny to have committed any of the offences and contend that the prosecution case is entirely false and that nothing happened at the motor stand beyond some of the accused displaying black flags to the Jain Muni in the procession by way of protest against this moving about in a naked condition through public streets. They have examined 16 witnesses on their behalf. Some of them viz, S.V. Kulkarni (Ex.43) H.N. Sardeshamukh (Ex.44) Udhav Savalaram page (Ex.58) are for the purpose of showing that nothing like breaking of the police cordon, shouting of the filthy slogans such as जैन धर्माचा नाश होवो, जैन धर्माचाधिक्कार असो. etc. or throwing of eggs at the procession and fighting with the police was indulged in by the accused near the motor-stand where the procession entered the Natepute village for going to be Jain Mandir. Witness Babu of Mandwe (Ex.45)

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and witness B.S. Kulkarni (Ex.46) are examined mainly for the purpose of showing that nothing untoward such as throwing of eggs or display of black flags and shouting of the anti-Jain Slogans was indulged in by any of the accused in front of the Jain Mandir. Witness N.D. Telware (Ex.47) is a clerk in Mamlatdars office at Malsiras who has produced some record of Criminal and other cases tried by Mr. Pathak, the then Mamlatdar of Malsiras. Witness J.N. Inamdar and S.D. Kanitkar (Ex. 50 & 53) are meant for showing that the Jain Muni Shantisagar Maharaj, who was then camping at Baramati was not anxious to come to Natepute on 24.12.41 that Mr. Deshamukh, the Sub-Insepector of Police Malsiras purposely went there to Baramati on 17th December 1941 and 20th December 1941 and invited the Muni to come over to Natepute assuring him that he (Mr. Deshamukh) would arrange for a proper bandobast and would see that the Muni was not melested. Witnesses D.B. Ghodke (Ex.48) V.k. Deshpande (Ex.51) Ganu Palwe (Ex.55) G.R. Keskar (Ex.56) B.R.Bhange (Ex.57) are meant to show that the prosecution witness Ganu Metakari (Ex.21) was not and could not have been at Natepute on the day of the alleged offence to serve as one of the Panchas for the Panchanamas at Ex.21-A, 21-B & 22-A but was at Boragaon only on that day and that the prosecution witnesses Muralidhar Rajame (Ex.3) Narayan Hivarkar (Ex.4) Balu Magar (Ex.7) and Narayan Ramchandra Patil of Kalambuli some of whom are also the Panches for the above mentioned Panchanamas

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had not gone to Natepute that day of their own accord or for their own business but were taken there by the Police Sub-Inspector Mr. Deshamukh purposely as men of his confidence. Witness Raghunath Phadtare (Ex.52) is meant to show that prosecution witnesses Talakchand Shah (Ex.16) Ramchand Shah (Ex.17) and Gulabchand Shah (Ex.18), who are the pleaders at Phaltan and had come to Natepute to attend to procession came to Natepute in the evening of the preceding day (23.12.41) and not in the morning of 24th December 1941, as they have stated. Witnesses Dhondi Teke (Ex.54) is meant to show that accused nos.6 Ramchandra Bharte was not at the motor stand at the time of the alleged offence but was in the weekly bazar and was given a beating and put under arrest near the police out –post office when he had gone there to make inquires about Pralhad Bharte, Shankar Bharte and Vasant Bharte (accused nos. 4,5 & 13) after he (Ramchandra) had learnt that these 3 accused had been put under arrest by the police and kept in the police lockup. The last witness Mr. B.V. Kane (EX.59) who is a pleader at Pandharpur who attended the court at every hearing of the case from a certain stage, was examined probably to show that the Jains at Natepute taken special interest in the case and have engaged him to help the Police Prosecutor, who is in charge of the case on behalf of the prosecution.

Having given this short description of the evidence

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of the prosecution witnesses and also of the defence witnesses, I shall now proceed to examine before proceeding to examine in detail the evidence on record on behalf of both the prosecution as well as the defence in respect of each of the offences with which the accused stand charged the question whether there is any truth in the allegation that Mr. Deshamukh, then P.S.I. has engineered this case and had especially gone to Baramati on 17th & 20th December 1941, for inviting the Muni 108 Shantisagar Maharaj, who was by then camping at Baramati to visit Natepute and whether he assured the Muni that he (the Sub-Inspectors) would make proper Bandobast in connection with his visit to Natepute and see that the Muni is not molested while at Natepute, if he would at all visit Natepute. Two witnesses have been examined on this point by the defense J.N. Inamdar and S.D. Kanitkar (Ex.50 & 53) who depose that Mr. Deshmukh 1941 had gone to Baramati on 17th December 1941 and had gone to the pendal where the Muni was putting up there, that there were some Jains also from Natepute present there, that Mr.Deshmukh asked the Muni there to come to Natepute and assured him that he would nake proper Bandobast in connectin with his visit if he would at all come to Natepute, that the Muni himself was unwilling to go to Natepute, and that some Jains of Baramati, who were present there, also desired that the Muni should not go to Natepute again, that the Muni ultimately agreed to go to Natepute because Mr. Deshmukh pressed him

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much to go to Natepute and that Mr.Dekhmukh then told the Muni that he would let him know which date would be suitable to letters visit to Natepute. I think this story is simply ridiculous and invented by the defense by talking advantage of the fact that Mr. Dekhmukh had gone to Baramati on 17th & 20th Decembers 1941 on some other business. Mr. Deshmukh has candidly admitted that he had gone to Baramati on 17th December 1941 with Mr. Pathak the then Mamlatdar of Malsiras on account of some business which Mr. Pathak had there and also that he had gone to Baramati again on 20th December 1941 for the same businesses of Mr. Baramati on 17th Mr.Deshmukh also admits that he had gone to the Muni casually on the 17th & 20th.he says in respect of his visit to Baramati on the 17th that he was to go to sholapur on the morning of the next day, the 18th Dec. 1941 along with other sub-inspector in the district for an interview with the Deputy Inspectors General of police who was then camping at sholapur, in response to a call from that officer that as it was necessary for him to start from Malsiras on the 17th in any case and as Mr. Pathak wanted him to go with him (Mr. Pathak) that day to Baramati which is about 50 miles from Malsiras, he made a little detour in going to Baramati in a motor with Mr. Pathak and then went to Dhond and caught the evening Madras express that day and reached Sholapur by about midnight and that as he was entitled under the rules to travelling allowance only for a journey by the shortest route he did

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not show in the diary of his movements this detour via Baramati, which was more-ever for a private purpose. The defence have examined two witnesses J.N. Inamdar (Ex.50) and S.D. Kanitkar (Ex.53) to show that Mr. Deshamukh had been to Baramati on 17th and had gone to the pendal where the Muni was sitting; and that had a talk with the Muni Shantisagar Maharaj in which he asked the Muni to come over to Natepute and said that the would make Bandobast at Natepute in connection with his visit, in case he would come and that he would communicate to him the convenient date for his visit. These two witnesses seem from their depositions to prefers to have gone to the pendal at one and the same time – some time after 3 P.M. on 17.12.41, but if we looks to their story, we find that the version of one is at varianee with that of the other. Witness Inamdar (Ex.50) says that Mr. Deshamukh opened the talk with the Muni and he asked the Muni to go to Natepute, while Kanitkar says that talls was opened by some Jains of Natepute who told the Muni that they had brought Mr. Deshmukh and said to him that he should therefore go to Natepute. There is also much difference between the evidence of these witness as to what Mr.Dekhmukh said to the Muni then Kanitkar (Ex.53) says that Deshmukh had arrived there in a touring car from the shop of one Tuljaram Chaturchand Gujar but Inamdar says that he does not know the fact that Mr. Dekhmukh came to Muni's place in a touring car and did not see any touring car there

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Mr. Inamdar has described in his statement Mr.Dekhmukh as a little bit father than himself. This is entirely wrong and suggests that Mr. Inamdar has not seen Mr. Deshmukh at. it is also not know how the defence came to know the facts that these two witnesses were present in the pendal where the Muni was sitting and where according to them the alleged talk took place. One of those witnesses Mr. Inambar is an Insurande organizer of some Insurance co. and Mr, V.D. Kale who is one of the signatures of the two applications submitted by the non-jain of Natepute in this very connections in 1938 and immediately after the present incident (Ex.23 & 50-A) is the medical adviser of that Insurance Co. and his wife Mrs. Laxmibai is the local agent at Natepute of that Insurance co. D.V.D. Kale and his wife Laxmibai thus belong to the local non-jain party and Dr kale takes active part in the movement againsts of the jain Muni going through the streets of Natepute in a naked condition and Mr. Inamdar seems to have come forward to support the cause of the non-Jains at the instance of Dr. kale and his wife. It is in evidence in this case that accused No.1 Shankarrao Ghogardare is a very rich and influential man and commands considerable influence among the non- Jains at Natepute and his surrounding villages and it is not difficult for him to secure a witness from among the non- Jains to depose in favors of the defence plea in a case like this where there are clear out divisions between Jains of Natepute and the. non-Jain of Natepute headed by Shankarrao Ghaogardare,

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accused No.1 I doubt therefore whether any of both of these witnesses were present and if Mr. Deshmukh really had the alleged talk with the Muni, there would not have been so many discrepancies in their various about the happening at that place. I note that Mr. Pathak also has not shown his visit to Baramati on 17th December 1941 in his diary (Ex.47 A) but this must be due to some similar reason as is put forthy by Mr.Dekhmukh. they both seem to have started from Baramati at about twelve noon as started by Mr.Dekhmukh and then Mr. Dekhmukh went to sholapur in the afternoon and the Malatdar must have gone back to Malsiras and then done some work. His clerk's evidence (Ex.47) shows that he used to come late to office at times. The hazy replies given by messrs Inamdar and karnitkar (Ex 50 & 53) to the question whether Mr. Pathak had gone to Baramati that day are also significant and suggestive of course the fact whether the Mamlatdar had gone to Baramati that day are also significant and suggestive of course the fact whether the Mamlatdar had gone to Baramati on 17th December 1941 does not effect the value of the evidence of the defence witnesses Inamdar and kanitkar (Ex. 50 & 53) as regards the talk Mr. Deshmukh is said to have had there with the Muni with the fact that the defence elected to cancel the Mamlatdar as their witness when they had once called him is also significant. It must also be remembered that Mr. Deshmukh is an experienced sub- Inspector of police and even granting for the sake of argument that he wanted

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to favors the jain (be it noted that no reason has been shown by the defense why he should favour the jain.), he would not have been so foolish as to have a talk of the nature described by these two witness –Messre Inamdar and karithar (Ex. 50 & 53) with the Muni in open in the presence of so many people, especially if as the defence alleges, he wanted to stage all this plot about the happenings at the scene of the offence on the morning of 24th December 1941, which he very well knew would be the subject of hot contest in a court of law. Moreover this very Muni was as admitted by the defence also staying at Natepute itself from 17th to 15th December 1941 i.e. within the jurisdictional limits of the Police Sub-Inspectors, Mr. Deshmukh and if Mr. Dekhmukh had any desire to oblige the Jains he could have very easily done it at that time only. I do not in the circumstances think that there the P.S.I Mr. Deshmukh had any desire to side, or did side with the Jains and invited the Jain Muni to visit Natepute on the day of the alleged offence though of course he was a little bit indiscrete, as I shall show later in allowing the procession. The accused seem to have invested this story talking advantages to of the fact that Mr. Deshmukh happened to go, for reason explained by him to Baramati about that time and to go to the place where the Muni was camping.

The defence also allege that the application at (Ex.2) A put in by witness Miyachand (Ex.2) and others on the

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strength of which the Sub-Insepector Mr. Dekhmukh (Ex.23) says he proceed to Natepute and arranged for the Bandobast at the procession was not actually put in Miya-chand on 23rd i.e the day preceding the day on the morning of which the procession took place thought it purports to be dated 23rd December 1941. the defence further alleged that Mr. Deshmukh took application later in the after-noon of 24th December 1941 after the procession was over, just to form the basis for the false case which he (the P.S.I.) was constructing against there accused. This allegation again is based on the pre-supposition that the P.S.I. was siding with the jains and was ready to do anything for them, for the existence of which position however, the defence has an already remarked shown no reason Miyachand has explained in his deposition (Ex.2) how he happened to go to Dahigaon from his Village Akluj in the afternoon of 23rd December and how he happened to come to know there that the Shantisagar Maharaj had already decided to visited Natepute while going to Mhaswad on the following day. Miyachand further says that as there was a jains temple at Natepute he and some others thought that the Muni would probably go to the temple for the darshan and as there was some trouble with the Muni's visit to Natepute in 1938 he thought it safe to apprise the authorities concerned of the fact and to request them to make the necessary bandobast. He says that he wrote the application at (Ex.2-A) at Dahigaon and took it to Malsiras on his

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way to his villages Akluja that he however found going to Malsiras that the P.S.I. was not at Malsiras but had gone to Akluj that he therefore proceeded to Akluj and handed over the application(Ex.2A)to the sub-Insepector theres at Akluj. The fact that the Muni decided at on the following day is also corroborated by prosecution witness Hirachand shah of Baramati (Ex.20) who also had gone to Dahigaon for the darshan of the Muni. This Hirachand states that there was no jain from Natepute there at Dahigaon at that time, the fact that was settled at Dahigaon on that day that the Muni was to visit Natepute on the following day on his way Mhaswad is also clear from the very circumstances that men from places like phaltan and pandharpur were present at Natepute in the morning of 24th on either casually getting a news of the Muni's intended visit to Natepute on the following days morning or on special message from some one from Dahigaon. If was natural in these circumstances in view to Natepute in 1938 for the jain to apprises the authorities concerned of the fact in time and to seek some bandobast and to have put in the application at (Ex. 2-A) on 23rd only. There is also one more point which I would like to discuss before I began to discuss the evidence about the main facts about the alleged happening s at the motor stand and in front of the jain temple on the morning of 24th Dec. prosecution witnesses Talakchand Venichand shah (Ex.18) who are the practicing pleaders at phaltan all says that they started from phaltan in a bus early in the

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morning of the 24th at about 7 or 7.30 A.M. and reached Natepute between 8.30 and 9 am, whereas the defence witnesses R.P. Phadtare (Ex.52) who is the motor agent of the kishore motor service at phaltan states that he had booked these three pleaders for a bus starting in the evening of 23rd and that these pleaders went from Phaltan to Natepute in the evening of 23rd of course the fact whether they traveled in the evening of 23rd in the morning of 24th would not seriously effect their evidence as regards the events in the procession of the morning of 24th as long as no one questions the facts of their presence at in the procession that morning. But the defense in leading phaddtare's evidence (Ex.52) intend to show that the procession of the 24th morning was a premeditated and pre-arrange thing through incidently the defense also wants to show that these three pleaders have told a .....at least in respect of one point viz, that they started from phaltan in the morning of 24th whereas they had actually started in the evening of 23rd . as regards the point that the procession of the Jain Muni at Natepute in the morning of 24th December was premeditated and pre-arranged event pre arranged on 23rd as for as the Jain are concerned, I think that fact can not be disputed in this case because the very fact that about 400 to 500 men professing the Jain religion were present at the procession and a few of them were from phaltan and pandharpur (Ex.16, 17, 18, & 39) show that it was pre-arranged on 23rd.these people from phaltan and pandharpur

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could not have been present at Natepute unless they had got intimation on the 23rd as they admit, about the intended procession at Natepute. On 24th and these witnesses have in fact stated that they got intimation about the procession in the evening of the 23rd. the fact that thired Muni in addition to the two Muni that came to Natepute from Dahigaon came to Natepute practically about the time but from the opposite direction that is from towards the cast also shows tat the procession was a pre- arranged business as for as the jains are concerned and in fact it seems that many of the accused also knew that there was going to be a procession of the Jain Muni that morning and so as admitted by the accused themselves they had gone to the motor stand with black flags as regards the second question whether these three witnesses (Ex.16,17 &18) are telling lies when they say that they arrived to Natepute on the morning of 24th and not in the evening of 23rd stated by the defense witnesses phadatare (Ex.52), I find that these three witnesses are very definite is saying that they arrived at Natepute in the morning of 24th and reached the point where the road from Dahigaon joins the main road at about 8-30 or some time between 8-30 am. & 9 a m. As against thus Mr. phadatare (Ex.52) says that he issued three tickets bearing Nos, 87025, 87026, & 87027. To these three pleaders and that these three pleaders traveled in the bus that started from phaltan at 5 pm. On 23rd. I however, seriously doubt

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whether we can believe this last statement of phadatare as an absolute truth. He is a agent at phaltan of the kishor motor service running between phaltan and Natepute and his duty is, in his own Words to took seats to issue tickets and to received the money and to see that the buses go in order and at the scheduled time. It is doubtful whether it is his business to see what men actually traveled in each bus , leaving apart the question whether he would of would not remember after such a long time, whether a particular individual traveled by a particular bus on a particular day, even if they had seen that man going by that bus. He further says that there are only there pleaders having the sir name shah at phaltan the duplicater (office copies) of the three tickets which phadatare says he issued to these three shah pleaders will be found at 87025, 87026 & 87027 in Ex.52. on the first two of those tickets (Nos. 87025,87026,& 87027) only "shah" is mentioned at the place for writing passengers name without the addition of his initials or the third "वकील" on the third only the word vakil has been mention after the word "shah" and Mr. phadatare tells us that from the presence of the word vakil on this last ticket he remember that these three tickets were issued to three shah pleaders I find this hard three to accept this is the position as regards the issue of tickets no one knows what the position is as regards the point whether these three pleaders actually traveled by that evening bus on

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23rd evening even if we hold that the three tickets were issued to the three pleaders. It was not the business of Mr. Phadatate to see what passengers actually traveled in each bus nor is it possible for him to remember such long time the fact even if he had seen it,. It also at time happens especially with big people that when any member of the family or quest from the house is to travel the tickets is asked for and is issued in the name of the head of the family. So the mention of "shah" "pleaders" on one of the three ticket can not necessarily mean that bus I cannot thus hold from Mr. Phadatare's evidence that the three prosecution witnesses at Ex.16.17. & 18 came by the evening bus on the 23rd these three witnesses are very respectable people –particularly the one at (Ex.52) that two buses full of passengers went from phaltan to Natepute early in the morning of 24th and these three witnesses might have traveled in one of there two buses in the morning of 24th it is also to be noted that Dr. V.D. kale of Natepute who as already shown sides with the non-jains party in actively opposing the movements of the jain Muni, figures in here also he is the agent as Natepute of this kishor motor service of which phadatare is the agent at phaltan and no one knows if he (Dr.kale) has not been responsible for securing Mr.phadatare.'s evidence on he half of the accused.

Before proceeding to discuss the evidence of the mail events alleged to have taken place in the morning of 24th

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I would like to mention here one more facts also which will have to be born in mind while considering the main case also while assessing the 4 relative value of the evidence on record-particularly of some of the defense witnesses; and it is that there is one Ramchand Dhanaji Dawada at Natepute a wealthy and influential Jain merchant who is said to be the leaders of the jains at Natepute and accused no.1 shankarrao Ghogardare is and equally wealthy and influential merchant among the non-Jain who is the leader of and commands considerable influence over the non-jains of Natepute and surrounding villages and that there has been strong rivalry almost amounting to enmity between these two local magnets of Natepute since long on account of their trade and that since only of fate this was giving a coloring as being due to the Jain Muni proceeding through the streets of Natepute in a mude condition. This rivalry is deposed to by prosecution witness Malukchand (Ex.15) and some others including the P.S.I. (Ex.23) the judgment at (Ex.23-A) also makes a mention of it. Assused Nos. 1,2, & 3 themselves admit the fact in their written statement at (Ex.24-A).the judgments of which a copy appears at (Ex.23-A) is a Judgment in case under section 295 I.P.C. filled by the police in which Ramchand Dhanaji Dhavada the Jains were convicted and sentenced each to a day's imprisonment and to a fine vary from Rs.25/- to 200/-. the accused Nos.1,2,3, contend in their statement at (Ex.24 A) that because of their rivalry and enmity with

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the Jains and in order to revenge the honor of Ramchand Dhanaji Davada their leader who was convicted in that case under section 395 I.P.C. and with a view to put a cheek of their (the accused Nos. 1, 2 & 3) usual activity in opposing the free movements of the Jain Muni in a mude condition through the village of Natepute the Jain have set up the case with the help of the police and have deposed to false facts. I think this plea of enmity and grudge is like a double edge sword cutting both ways and as it is just possible that the Jains will depose to false things for avenging the honor of their leader Davada it is equally possible for the accused Nos.1,2,& 3 being elated by the successes, which they got in the cri. Case against Davada and other Jains, to take more active steps in opposing the procession of the Jains Muni which is their avowed object as can be seen from there statement at Ex. 24 A and there by belittling their enemies or rivals the Jains. More – over it must be remembered that the case has been lodged by the police and not by the Jains and no reason has been shown by the Jains. The fact however remains outstanding that there is rivalry or enmity between the accused Nos.1,2,& 3 on one hand and Ramchand Dhawada on the other and that both Dhawada and accused No 1 shankarrao Ghogardare are very influential men among the Jains and non – Jains respectively. This fact must be brow in considering the evidence on record.

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Having thus death with these 4 points viz. (1) whether P.S.I. Mr. Deshamukh had invited the Muni to come to Natepute on the 24th and was acting in collusion with the Jains. (2) Whether the application at 2A is a false document taken after the prosecution of 24th morning had passed. (3) whether the4 procession was a prearrange thing and (4) Whether the Gujar witnesses at Ex. Nos. 16, 17,18, are deposing to false fact viz, that they come to Natepute on 24th morning and not on 23rd evening due to rivalry which if proved would have adversely affected the prosecution case I now proceed to discuss the various points for determination under each section under which the accused have been charged.

The accused are charged in this case (Ex.38) with offences under sections 147,296,298, & 152 or 353 &152 or 353 read with section 35 I.P.C.

In all 26 witnesses have been as already started examined in this case on behalf of the prosecution including the complainant (Ex.1) police Jamadar Sultan Hussain and the investigation police officer Mr. Deshmukh (Ex.23) who was the then Sub-Inspector of Police Malsiras. On the remaining 24th witnesses 6 are the various police officers (EX. 5, 4, 10, 11, 12, 13,) detailed by the Sub-Inspector Mr. Deshmukh for making the necessary Bandobast at the time of the Muni to Natepute (Ex.6) is the police patil of Natepute. Witnesses Miyachand (Ex.2)

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Malukchand (Ex.15) Talakchand Shah (Ex.16) Ramchand Shah (Ex.17) Gulabchand Shah (Ex.18) Ramchaned Doshi (Ex.19) Hirachand Talakchand (Ex.20) Dr. Vora (Ex.39) Ramchand Laxmichand (Ex.40) and Motil Kothari (Ex.41) are all Jain Gujars who were present in the procession in question and witnesses Murlidhar Rajamane (Ex.3) Narayan Hiwarkar (Ex.4) Balu Magar (Ex.7) Narayan patil (Ex.8) Ambaji Rangat (Ex.9) Ganpat Metkari (Ex.21) are men from the adjoining villages who had come to Natepute for the weekly Bazar or for some other businesses and were present at the motor – stand and Narayan Aba Salunkhe (Ex.22) is a man from pimpri an adjoining villages who was not present at the motor-stand when the procession came there but who came there later after the procession had gone back and who has served as one of the panchas for the panchanamas at (Ex.21-A) about the finding and attachment of the dead rat (घूस) on the road ghogardare brothers (of which shop accused no.1 is one of the owners) and of pieces of broken eggs in front of Jain temple and for the panchanama at (Ex.22-A) about the finding and attachment of pieces of the shell of broken eggs and five black flags (cloth only) and there stick or handless of the flags at the seen of the offence. These witnesses completely corroborate the prosecution story witness Miyachand (Ex.2) says that the Acharya 108 Shantisagar Maharaj was staying at Dahigaon near Natepute in the month of Testha Shake 1863 (about may 1941) that then he came to Akluj stayed there for five

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months for the Chaturmas that from Akluj he went to Natepute from there to Baramati and then came back again to Dahigaon and stayed there for a few days. He further says that he was going for the Darshane of the Muni every day while the Muni was staying at his (witness) villages Akluj that to Dahigaon also he went 4 or 5 times for the Darshan of the Muni during the Muni's stay there, that he went there last on 23rd December 1941 and there came to know that the Muni was to go to Mhaswad the next day, via Natepute to take Darshan of the deity in the temple at Natepute that in view of the fact that there was some trouble at Natepute in connection with the visit of some Muni's going to the temple in a naked condition in 1938 he though it desirable to apprise the police of the intended visit of the Muni to the Jain temple and so he wrote the application at (Ex.2A) and took it to Malsiras the Head quarter of the Taluka Police Sub-Inspector but these he found that the sub-Inspector had gone to Akluj and so he went to Akluj and handed over the application to the sub-Inspector there. The Sub-Inspector (Ex.23) supports this fact of this application (Ex.2A) having been handed over to him at Akluj and says that on that application being presented to him he accepted it and told and told Miyachand that the Muni and his followers should take darshan and immediately go away and should not linger or go by any other (other than the road that leads to Jain temple) road in the village. He further

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says that he then went to Malsiras and ordered his Head Constables Sultan Hussain the Complainant in this case to go to Natepute for the bandobast in connection wi0th the Muni's visit with the necessary police men and that he then went to Natepute that very night and on going there he told the Head constable i.e. of the Police out Post at Natepute that the Jain Muni was to visit the place (Natepute) the next morning and asked the police Head Constable I/IC Natepute out post and other police men under him to be ready by about 7 or 7.30 A.M. the next morning and that he himself and other police men including the complainant Sultan Hussain went the next morning to the motor stand at Natepute where the Muni would normally enter the town of Natepute and all stood there in uniform awaiting the arrival of the Muni. The complainant Head Constable corroborates this fact. The defence contends that it is not true that this application was submitted to the Sub-Inspectors in the evening of 23rd December 1941 but was taken by the Sub-Inspector some time after the procession of the Muni in the morning of 24th was over. I have already dealt with this point in my discussion of the three or four general points affecting this case and have shown that the contention of the defence in this behalf is not acceptable.

The Sub-Inspector further says (Ex. 23) that some time after he and the police under him had gone their in

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uniform to the motor-stand all the accused now before the court and one Gopal Chintaman Paithankar who is now absconding with some more men came there from the Natepute village with black flags in their hands, and on being questioned accused No. 1,2 &3 who are the leaders of the non-jains told him that they wanted to protest against the entry of the Jain Muni in a nude – condition in the village by showing black flags to him. The Sub-Inspector then told them the Jain Muni was to go to the Jain temple take Darshan and go back by the same route by which he was to go to the temple, that the whole affair would not occupy more than an hour and that if they could not tolerate the sight of a naked Muni going by the road they had better go home or somewhere and that the accused nos. 1,2,&3 thereupon told him that they would only display black flags to the Muni for expressing their protest for moving about in a nude condition through public streets and would not indulge in any untoward act leading to a breach of the public peace. The Sub-Inspector further says that as the accused nos. 1,2,&3 assured him in this way he allowed the black flaggers among whom were the accused and also Paithankar to stand there but asked them to go a little bit aside and stand there at a distance from the road. They accordingly went and stood under a Nimb tree on the East of the road that branches off from the main Pandharpur Mahad road and goes in the village. This Nimb tree is shown by later "C" is the sketch at (Ex. 1-A) The

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Sub-Inspector says that he then posted his police men in a line in front of the accused along the Eastern edge of the road to the village at the place marked by crosses at point B in the sketch. This is did he says with a view to put a cheep over a possible attempt on the part of the accused to cause any trouble The Sub-Inspector further says that then at about 9 A.M. the Jain Muni with his followers came from Dahigaon and joined the main Pandharpur road at the point A in the sletch for coming over to Natepute village that the Jain People from Natepute and places like Phaltan and Pandharpur and the adjoining villages, who has assembled there went to that point to receive the Muni that the Jains from Natepute worshipped the Muni at that point according to their customs; and then the Muni with all these people started to go to the village of Natepute. There were about 400 to 500 men then with the Muni. The Muni was in the middle on centre, a number of people were walking in front of him some were walking behind him, while some more were on both sides of him and there was, as if a procession. The Sub-Inspector of police further says that after the procession had taken a turn and come on the road that goes in the village and some of the men had already gone on and beyond the culvert which is a little on the south of the point at which the police were standing in a line in-front of the accused and while the Muni and other men were yet on the north of the culvert, the accused began to shout out slogans like जैन धर्माचा धिक्कार

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असो, नागण्या मुनीचा धिक्कार असो, जैन धर्माचा नाश होवो, नागन्दा बुल्लीचा धिक्कार असो, हांडण्या मुनीचा धिक्कार असो. – and the like and began to come towards the police who were standing in a line in front of them. The Sub-Inspector says that accused No. 1 started shouting the slogans by first crying out हर हर महादेव and then accused Nos. 1 & 2 would say the first part of the slogans such as जैन धर्माचा, हांडया पुनीचा, ण नागण्या मुनीचा and the other accused would complete the slogans by adding the words च नाश हावो वत धिक्कार असो to the words जैन धर्माचा हांडण्या मुनीचा वत नागव्या मुनीचा बनागडया बुल्लीचा respectively, as the case may be and some of the accused threw eggs at the processionists and some accused began to carry out by bellowing as on Shimaga day (बोंव मारली) The Sub-Inspector further says that as the police saw that the accused were coming forward towards them and were likely to rush into the procession the police turned their faces which were upto then towards the processionists towards the accused and formed a cordon by holding each others arms. The accused began to come nearer and nearer to the police. The Sub-Inspector says that at this stage he tried to impress on accused No. 1 that childish acts must be stopped but he defined the advice and all accused rushed forward and broke the police cordon and rushed among the processionists and began to malhandle the processionists. The police there upon tried to take the accused out of processionists but the accused began to oppose them and to struggle with them. The accused and the police

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pushed each other and in this way they pushed each other towards the other side of the road in front of a "Pan" shop owned by Anusuyabai. There accused No. 4 Pralhad gave him a stroke with the handle of his flag on his shoulder and was to give him another blow but the Sub-Inspector tried to avoid it by raising his hand and the blow fell on his right hand fingers. Accused No. 5 held him by his waist. Accused No. 1 & 2 rushed at him and some assaulted and used force to other police officers. The "Dagla" of constable Namdev Maruti was torn while this was going on in front of Anusuyabai shop the procession was moving on. The Sub-Inspector says that he asked most of his sub-ordinate police to go with the procession and they accordingly went on with the procession and they accordingly went on with the procession that he detained accused no. 4 that all the accused went on with or after the procession that he asked his constable Mahibub to fetch the handcuff that on getting the handcuff Pralhad was handcuffed and sent to the police Chauki and that he then went towards the jain temple after keeping some Ramoshis to guard the pieces of broken eggs and the flags and sticks that had dropped there and to maintain the state of things till he would come back. He further says that while going to the Jain temple he noticed that a dead rat was lying in front of his shop of one Hingangaonkar and of Ghogardare Bros. with its intestnes protruding and that he also noticed some pieces of broken eggs lying on the road in front of

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the Jain temple. This story has been corroborated by all the prosecution witnesses at Ex. Nos. 1 & 21 & 39, 40 & 41 who were present on the spot at the motor stand when there happenings took place. I shall deal with some of these facts later while discussing the different points under each section with which the accused are charged. But it is clear from all this that all the 14 accused and one Paithankar who is now absconding were present there armed with black flags near the Motor stand when the procession came there. All the accused except Nos. 4 & 6 have admitted their presence at the motor stand with black flags in their hands. Accused no. 4 Pralhad has stated (Ex. 27-A) that he was not present among the other accused but had gone to the tea shop of one Bhaya shown by letter 'F' on the sketch at about 9 A.M. for taking tea and that when he came out of that shop after the procession had gone on towards the Jain temple, the P.S.I. accosted him as to where he was going and beat him without any reason and arrested him and sent him to the lockup. Bhayas shop is, as can he seen from the sketch in the same building in which is situated Anusuyabi "Pan" shop in front of which this accused is alleged to have given blow with the handle of his flag to the Sub-Inspector. The hour 9 A.M. at which he says he had gone to Bhaya's shop is practically the very time when the procession had arrived there. This accused Pralhad thus virtually admits his presence at the scene of the offence and yet contends that he had no concern with these

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happenings or the procession and that the P.S.I. beat him and arrested him and sent him to the lockup, without any reason Pralhad however has given no explanation as to why the S.I. should have treated him in that way. Similarly accused no. 6 Ramchandra Bharte has started that he had gone to the weekly bazar site that day, which is near the Police Chauki that there at bout 11 a.m. he came to know that his relatives Pralhad Shankar and Vasant (accused nos. 4,5 & 13) had been brought to the police Chauki that he therefore went to the police Chauki for inquiring as to why they had been arrested and that there he was himself assaulted and beaten by constable Jagannath (Ex. 11) and the S.I. and was put under arrest. This accused also has given no explanation as to why the S.I. should have treated him in that way. Accused Ramchandra had examined one witness Dhondi Bapu Teke (Ex. 54) who supports his story. Similarly defence witness Udhav Savalaram Page (Ex. 58) has also borne out Pralhad's story. Both these witnesses are local men (non-jains) from Natepute and it seems from their evidence itself that they have sympathies for if they are not actively siding with these respective accused and I am not prepared to believe in their version that accused Pralhad to believe in their version that accused Pralhad and Ramchandra (Nos. 4 & 6) were not with and among the other accused and participated in what the other accused did in view of the overwhelming evidence of respectable witnesses on

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behalf of the prosecution which shows that these two accused were associates of the other 12 accused now before court and were among them at that time. It is thus clear that all these 14 accused were there with black flags in their hands, had assembled there near the motor-stand when the procession came there and formed an assembly. The next question is whether the accused which numbered more than 5 formed an unlawful assembly.

Now as regards this point viz. whether the assembly so composed of the 14 accused now before the court and one Gopal Paithankar was an unlawful assembly an assembly of five or more persons becomes an unlawful assembly if the common object of such assembly is one of the five objects mentioned in section 141 I.P.C. In this particular case the charge at Ex. 38 mentions that the common object of this assembly of the accused (and of Paithankar) was (1) to voluntarily cause disturbance to an assembly of jain persons lawfully engaged in the performance of religious ceremony and (2) to utter words in the hearing of the persons forming that assembly costing of jain Muni and his followers and to make gestures in their sight with the deliberate intention of wounding their religious feelings. In this case there is no dispute about the fact that there was an assembly of about 300 to 400 Jains who had assembled near the point where the road from Dahigaon joins the main Pandharpur Mahad

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road shown by letter A on the sketch at Ex. 1-A and that it then proceeded to the motor-stand and then took a turn towards the south and went by the road going Southward to the temple with **Acharya Shri 108 Shantisagar Maharaj** among them who was to go to the temple for Darshan. The next question is whether this assembly of jains was engaged in the performance of a religious ceremony and if so whether they were lawfully engaged in that ceremony. The evidence of all the Gujar witnesses and particularly the evidence of the three pleaders from Phaltan at Ex. 16, 17 & 18 and of Malukchand (Ex. 15) and of Dr. Vora (Ex. 39) from Pandharpur and of Miyachand (Ex. 2) and of Hirachand (Ex. 20) shows that this **108 Shantisagar Maharaj** is the present principal religious Head of the Digambar sect of the Jains who formed the assembly in the procession in the whole of India and is held by them in such a great esteem and reverence that he is regarded by them as next to and God and that there is no individual among the Digambar Jains superior to him in India at present. The Jains after worshipping their Guru at the point at which Dahigaon road joins the main road were taking him in a procession to the Jain temple with "Jais" to him. This was thus clearly a religious ceremony of the Jains. The defence have tried to take out from witness Talak chand (Ex.16) and some others that Natepute is not a place of any pilgrimage, that 24th December was not also a day of any special religious or social importance,

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for showing that theprocession in Question was not a religious ceremony. But if we read the evidence of there Jain witnesses, we find that this Jain Acharya is always on his "Sanchar" (i.e. religious tour) and witness Talakchand (Ex.16) had also stated that this visit to Natepute on 24th from Dahigaon was also in the course of his "Sanchar". In these circumstances, I do not think that the facts that Natepute is not a place of Pilgrimage, or 24th December 41 was not a special holy day, can deprive this proession of its religious nature, when the Jains, who hold the Acharya in so great a reverence, decide to take him in a proession. It is in evidence that theprocessionists were shoutings Jais (शांती सागर महाराज की जय) all along in the procession. This will show that the Jains, forming the procession, were then religiously minded and that the procession was a religious ceremony. Now the next question is whether these jains were lawfully engaged in the performance of this religious ceremony. The defence contend in this connection that the jains can not be said to have been lawfully engaged in this religious ceremony, is as much they were using a public street for this religious procession and that public streets are meant mainly for the use of the public in general as a passage only and that the jains any claim to take out their procession along a public street but not exclusively that their right to use the road for a procession is subject to the right of the general public to use the same as a passage. I quite agree with this view but in the present case there is

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nothing in evidence to show that the jains claimed as exclusive right of using the road exclusively for their procession or to show that either the jains or the Police stopped or prohibited any person from using the road in question as a road while the procession was going. But the fact that the jains had no right to use the road exclusively for their procession does not mean that any non-processionist can interfere with the procession in the way the accused are alleged to have done. In connection with the question whether a person engaged in a religious ceremony on a highway or a public road can be said to have been lawfully engaged in the performance of such ceremony the defence have referred me to the case of the Madras High Court (XXVI-M554-588). I have read this case carefully and I find that the principal enunciated in this case is mainly that a procession as such has not specific legal character and that the only rights claimable by those constituting a procession on a highway or public street are what apertain to them as individuals that a road is meant to serve as a means of passage and that doing of any thing so altogether foreign to that paramount idea as the carrying of religious worship on a public street can not be held as a proper incident to the right of passage. Here in the present case the procession was a religious ceremony that is an assembly in motion and not a stationary worship at a particular point as regards processions it has been said in the judgement in this very Madras case that processions se

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are quite unconjectionable and that though there is no right known to the law as a right of procession and that though the law accords to the members of the procession no recognition in their collective capacity yet the fact that number of persons use the road for common purpose does not detract in any way from such use being lawful. It has also been held in the cases quoted on page 681 of Nandlals I.P. Code 1929 Edition that persons of whatever sect are entitled to conduct religious processions through public street provided they do not interfere with the ordinary use of such street by the public. In the present case as it was not a worship on a highway which the jains were doing but a procession and as the public in general were not deprived of their paramount right of using the road as a road or passage I think the Jains constituting the procession which I have held as amounting to religious ceremony were lawfully engaged in that religious ceremony.

It has also been held in the case Sundram Chetti Vs. Queen O P I 203 Quoted on page 682 of Nandlal's I.P.C. 1929 Edition that there is no presumption of unlawfulness in carrying a religious procession and the intention of the accused to use criminal force or commit some other offence at all costs is the factor deciding the object of unlawful assembly and that when rights such as the rights of procession are threatened the persons entitled to them should receive the fullest protection. The defence also

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contend that the Munis by proceeding in the procession in a condition of nudity were themselves commiting an offence under Section 61(0) of the District Police Act or section 294 I.P.C. and that and obstruction to an illegal act is no offence. Section 61 of the District Police Act had not been made applicable to the town of Natepute. No doubt indecent exposure of one's person constitutes an offence under section 294 I.P.C. But I do not think that facts gives the accused who were not the custodians of law and order at Natepute to take the law in their own hands and to do any criminal acts. The Jain Muni is the principal religious head of the Digambar sect of the jains and it is abundantly clear from the evidence of the jain witnesses for the prosecution and particularly of Talakchand Shah (Ex.16) and of Dr. Vora (Ex.39) that the Digambar sect of jains believe that God is naked and does not wear clothes and the Sky is the only covering for him as the name "Digambar" denotes and that following the god the Gurus of the religions also are always without any cloths and move about in a state of nudity. The writing on page 17 to 22 and particularly that on 21 and 22 of Ex. 16-B shows that the Digambar Jain religion recognizes the moving about of the Jain Munis in a state of nudity. The Muni concerned in this affair Shantisagar Maharaj always moves about in a naked state and is naked even in processions and assemblies and also on big occasions when Princes etc. come to see him. The defence contends that the moving about the Muni in a state of

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nudity is a source of nuisance to the non-jains and so the sub Divisional Magistrate – Pandharpur Town had passed orders in 1938 when a deciple of this Guru – one Nemisagar Maharaj had – visited Natepute in 1938, restricting the movements of the Muni in the street of Natepute to a certain hours. A copy of this order will be found at Ex. 23-B. This order had no doubt restricted the movements of the jain Muni in a nude condition through the streets of – Natepute of certain periods such as 9.30 A.M. to 11.30 A.M. 1 P.M. to 2 P.M. and 4.30 to 6 P.M. But at the same time this order impliedly recognize the right of the practice of the muni to go in a state of nudity through the streets and gaothan of Natepute and enjoined on the non-jains not to do any provocative actions, such as, carrying of black flags or other provocative symbols and to obtain from hindering or obstructing the free passage of the Digambar Sadhu. This will show that the right or practice of the jain muni to move about in a state of – nudity to the streets of Natepute was recognized even 1938. On the present occasion also the Jain muni arrived at Natepute at about 9 A.M. and the Sub Inspector had clearly given the accused to understand that the (Muni) will leave Natepute within an hour. So the fact that the muni proposed moving through the streets of Natepute in a nude condition within this limited time did not confer on the accused any privilege of acting in the way in which they are alleged to have acted. In the case Peary Mohan Sircar 1883 9

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Calcutta 639 quoted on page 320 of Ratanlal's law of Crimes, it has been held that where the accused assembled and forceably interrupted a procession upon the ground that it was a nuisance or annoyance to them or other community, their act clearly fell under clause (4) of section 141 I.P.C. In the present case we are of course concerned with clause 3 of section 141; but the position of the acts of the accused is the same if we can show that they committed any offences on the please that the Munis moving about in a nude condition caused nuisance or annoyance to them or to the non-jains in general. Thus the alleged actions of the accused can not be justified on the ground than the Muni was himself causing an annoyance or nuisance to the accused or to the non-jains in general and thereby was committing an offence falling under section 294, I.P.C. and the other processionist were abetting him.

Now as regards the question whether the object of the accused was (1) to voluntarily cause disturbance to the assembly of the jains which was an already shown lawfully engaged in the performance of a religious ceremony and (2) to utter words in the hearing of the persons forming that assembly constituted of the jain Munis and his followers with the deliberate intention of wounding their religious feelings, I find that there is overwhelming and reliable evidence on behalf of the prosecution which definitely shows that the accused had

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this object. All the accused except Nos. 4 to 6 themselves admit that they had gone to the scene of the offence with black flags in their hands. It will be seen that the carrying or display of black flags was held objectionable even in the order passed in this behalf in 1938 (Ex.23-B). It is clear from the evidence of the Police Sub-Inspector and of all other prosecution witnesses Exs. 1 to 21 & 39, 40 & 41 that accused Nos. 4 & 6 were also among these accused and that seeing that the accused had arrived there near the motor stand with black flags in their hand, the P.S.I. approached them and told them that the Jain Muni was to arrive there and to visit the Jain Temple and would then go back and that the whole affair would not occupy more than hour and that if they could not bear the sight of a naked muni going through the street to the temple they had better go home and that the accused thereupon told the P.S.I. that they would do nothing beyond displaying black flags for expressing their protest and would not commit any act leading to a breach of the peace. It is further clear from the evidence of the P.S.I. (Ex. 23) and of the prosecution witnesses mentioned above that as soon as the Muni and the processionists came near the motor stand and came on the road leading to the Jain temple through village of Natepute all the accused at once and inspite of the assurance given to the P.S.I. began to shout out slogans. जैन धर्माचार धिक्कार असो, नागव्या मुनीचा धिक्कार असो. जैन धर्माचा नाश होवो, हाडायांमुनीचा धिक्कार असो. etc. Some of them began to

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cry by bellowing as on Shimga day (बोंब) and some of them threw eggs at the Muni which however missed him and fell on two of the processionist one Raichand Bhaichand of Natepute (Ex.19) and one Motilal Kothari of Phaltan (Ex. 41) that the accused began to come forward towards the procession that on seeing this the police who were standing in a line in front of them at one turned their faces towards them and formed a cordon by holding each others arms that accused broke the cordon inspite of the opposition of the police rushed into the processionists and began to mishandle some of them and that when the police tried to take them out of the procession the accused struggled with them also and some of the accused gave slight beating also to some members of the police. Some of the accused then also followed the procession to the Jain temple and there also indulged in shouting the same slogans. Some more eggs were thrown at the procession there also. All these facts are deposed to by almost every prosecution witness at Ex. 1 to 21 & 23, 39, 40 & 41. Some of whom are very respectable people while others are responsible Govt. Officers like the Sub-Inspector of Police and Head Constables of Police. The shouting of these filthy and offending slogans and throwing of eggs and malhandling of some of the processionists surely amount to causing disturbance to the assembly of the Digambar Jains in the procession which is already shown was lawfully engaged in the performance of religious ceremony, and had the

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effect of wounding their religious feeling. The fact that all the accused had come there with black flags in their hands in a body and on the approach of the Muni and the procession in front them at once began to shout out those offending slogans and to cry out by bellowing as on Shimga day (बोंब) and rushed forward together and into the procession of the Jains on breaking the police cordon and there to malhandle the processionists and also to resist the police and to struggle with them when they began to take them out of the processionists and also throwing of eggs by some of them shows that all the accused had came there with a preplanned determination to oppose the procession of the Jain Muni and to cause disturbance to the jain people in the procession and with deliberate intention to wound their religious feelings. The eggs were thrown by some of the accused only, but eggs is not a commodity, which can be secured on the spur of the moment so the accused must have brought them when they came there and all must haven knowledge about them this shows that the assembly which the accused formed was un unlawful assembly and that they had come there with the common object to voluntarily cause disturbance to the assembly of the jains and also had to pre-conceived deliberate intention of wounding the religious feelings of the Muni as well as the Jains.

As regards points Nos. 4 & 5 under section 147 viz.

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whether force or violence was used by any of the members of the unlawful assembly of the accused and if so whether such force or violence was used in furtherance of the common object of the unlawful assembly I find that there is ample evidence to show that when the prosecution came on the road leading to the temple the accused threw eggs at the processionists and broke the police cordon rushed into the procession malhandled some of processionists by giving pushes to them and that when the police began to take them out of the processionists some of the accused began to struggle with the police and the police and the accused went struggling with each other to the other side of the road in front of the "Pan" shop of one Anusuyaba and there some of the accused struggled with some members of the police and one of them (no. 4) gave stick blows to the P.S.I. and accused No. 13 gave a blow with his fist to the complainant Sultan Hussain accused nos. 1 & 2 struggled with the P.S.I. accused no. 5 held him by his waist while some other accused malhandled other subordinate police officer and the Dagla of constable Namdev Maruti was torn in the struggle. Almost every witness at Ex. No. 1 to 21 23, 39, 40 & 41 has deposed to these facts which clearly shows that the accused did use force and violence. Throwing of eggs, breaking the police cordon malhandling of some of the processionists and malhandling members of the police force do amount to the use of force and violence and there will be no two opinions in the

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circumstances of the case, that this violence and force were used in furtherence and for the fulfilment of the common object described above with which the accused had come there.

The accused as already stated have denied to have done anything beyond accused nos. 1 to 3, 5, & 7 to 14 displaying black flags to have uttered the slogans to have broken the police cordon to have malhandled any of the processionists and to have struggled with any number of the police or to have beaten any of them. Accused nos 4 & 6 have further state that they were not at all with the other accused and is not display black flag also. These two accused (Nos 4 & 6) have produced evidence in support of their contention. I have already discussed that evidence and explained why I hold the accused Nos. 4 & 6 were also present at the scene of the offence along with other accused and participated in the happenings that took place there. As already stated there is ample evidence of as many as 25 witnesses on behalf of the prosecution to show that force and violence was used by most by the accused. The accused have examined 3 witnesses Shankarrao Kulkarni (Ex.43) H.M. Sardeshmukh (Ex.44) and Udhav S. Page (Ex.58) to show that nothing like shouting of the slogans the throwing of the eggs, breaking of the police cordon and malhandling the processionists and struggling with the police or beating any of the police took place at the motor stand, but I

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find that their evidence is not reliable because that evidence is discrepant and these witnesses seem to be interested because either of their affinity for accused nos. 1, 2, & 3 or out of grudge against some leaders of the Jain party. Shankarrao (Ex.43) says that he went to Natepute at about 9 a.m. and went to the house of accused No. 1 that on learning there that he had gone to the motor stand he went to the motor stand and on finding there that the Jain Muni's procession was to pass by the road he stood on the Katta of the hotel of witness Sardeshmukh and stood there watching the procession Natepute is a small village and this witness must have taken a few minutes to go to the motor stand and to stand and to stand there on the Katta of Sardeshmukh hotel i.e. he must have gone there by about 9-15 a.m. or 9.30 a.m. As against this witness Sardeshmukh (Ex.44) says he saw Shankarrao Kulkarni at about 10 or 10.30 a.m. by which time probably the whole procession must have gone from the stand towards the temple and there was noting left for this witness Shankarrao (Ex.43) to see then this witness Shankarrao states that then he went to the house of the accused No. 1 Shankarrao Ghogadare accused Nos 1,2, & 3 were there that all of them tools food there at the house of accused No. 1 and that there was absolutely no talk there as to why accused nos. 1, 2, & 3 had gone to the motor stand that morning or about anything that has taken places there. I think it is unbelievable that they had no talk there about at least

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accused Nos. 1, 2, & 3 having succeeded in showing black flags to the Jain Muni. This witness seems from his own admission to be a great friend of accused No. 1 and also to have sympathies for accused No. 3 who had Deshamukh Inam lands at his village Girvi and these is no wonder that he should come forward as a witness for the accused and to depose to facts suitable to his friends accused Nos. 1 & 3 and No. 2 a relative of accused No. 1. That he is interested in accused nos. 1 & 2 can also be seen from the cross-examination of defence witness Bhimrao (Ex.57). The next witness H.N. Sardeshmukh (Ex.44) and Udhav Savalaram Pape (Ex.58) share the same remarks Sardeshmukh has some grudge against Gaggaram Metha one of the Jain leaders because he has ousted him from the room where Sardeshmukh was running a tea shop. He also is a non-Jain and as such must be inclined to help the non-Jain party in a case like this and I find that in his attempt to help them he has gone the length of telling that accused nos. 1, 2, & 3 had no black flags in their hands, while these accused no. 1, 2, & 3 themselves admit that they had carried black flags in their hands. It is however, to be noted that this witness though trying to help the accused no. 1 to admit that some of the accused with black flags in their hands, followed the procession which fact the accused entirely deny. Witness Page has his own grievances against Ramchand Davada the pivot of the Jain-party, in respect of his house purchased by Davada and his evidence also

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must be viewed with great caution. He had the goodness, or rather the boldness to say that he only saw accused Nos. 1, 2, & 3 one more i.e. in all 4 accused and do more accused among the man that were standing under the Nimb tree while at least 12 of the present accused admit that they were all under that Nimb tree. In these circumstances I find that the evidence of these witness is not believable. The witness Bapu Somaji Palwe (Ex.45) deposes that he had gone to Natepute that Wednesday from his village Mandve as he wanted to purchase groundnut calee manure and so he went in his cast to Natepute by a road coming from towards the south of Natepute that he took the vart upto the Post office and then as the cart would not go further on account of the crowd he stopped his cart there and then went towards the Ram and Jain temple and stood on the Katta of Shri Ram temple that the procession then came that witness B.S. Kulkarni (Ex.46) was also there on the Katta that he asked him as to what the procession was about and that he (B.S. Kulkarni) told him that it was then Jain Munis procession witness Balkrishna Sitaram Kulkarni (Ex.46) says that he had come to Natepute that morning from Girvi with carts for taking some material for creating pendal etc. for some Agricultural conference to be held at Girvi that he came in his cart by the same road from towards the south by which witness Bapu (Ex.45) had come, that on coming up to the post office he found the road full of men and so could not take his cart further

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and therefore stopped them near the post office and himself went towards the Jain temple and stood on the Katta of the Ram temple near the previous witness Bapu (Ex.45) Both these witnesses (Ex.45 & 46) say that there were some more men on that Katta but none of them had any black flags in their hands that no one came with black flags and no one threw eggs from that Katta at the processionists. These two witnesses naturally do not say anything about the events at or near the motor stand from where the procession started. This witness Balkrishna is a distant relative of the first defence witness Shankarrao Kulkarni and both of them profess to have come to Natepute for one and the same purpose viz. in connection with the agricultural conference. This Balkrishna also had put up that day at the house of accused No. 1 with whom he seems to be friendly and took his food there. He says that accused Nos. 1, 2, & 3 were all there but there was not talk about the procession or about accused nos. 1, 2, & 3 having gone there to the motor stand with black flags or about any beating to or by the Sub-Inspector of Police. While discussing the evidence of witness Shankarrao Kulkarni (Ex.43) I have remarked that this looks unnatural Both these witnesses say that though they were at Natepute till about 2 or 3 p.m, they did not near during that period that there was any trouble and that any of the accused had been arrested. Natepute is a small village and if these mend had really gone there and were there till 2 or 3 p.m. as they assert they would have

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surely heard of some of the accused having been arrested especially if, as the defence assert the arrests were without any reason and as such unjustiable which was sure to cause commotion in the village. Accordingly to the accused no 6 most of the accused were arrested by 11 a.m. i.e. long before these two witnesses say they left Natepute there is also another circumstances for which I believe that these witnesses and also witness Shankarrao (Ex.43) must not have come to Natepute that day. These witnesses say that they came to Natepute in their carts by the road that comes from towards the South. I have visited Natepute on 10.1.42 for seeing the scene of the offence and was shown the road coming from towards the South and I found that it was complete indisrepair and not at all possible for bullock carts. I have made a note to this effect in my notes of inspection (Ex.60) I thus find that the evidence of those two witnesses also is not worth relying upon.

I have already dealt with the evidence of defence witnesses J.N. Inamdar (Ex.50) Raghinath Pandurang Phadatare (Ex. 52) the motor agent at Phaltan of S.D. Kortikar (Ex. 53) and Dhondi Bapu Teke (Ex. 54) while discussing the question of the alleged talk of Mr. Deshamukh with the Muni at Baramati, the allegation that the prosecution witnesses at Ex. 16, 17, 18 the three Shah pleaders of Phaltan went to Natepute in the evening of 23rd December and the allegation of accused

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no. 6 Ramchandra Bharte that he was beaten and arrested near the Police Chauki and not all the motor stand and shown why I do not believe in their evidence.

The remaining four witnesses for the defence viz. Digambar Balwant Ghodke (Ex. 48) V.K. Deshpande (Ex. 51) Genu Krishna Palwa (Ex. 55) and witness R.B. Bhange (Ex. 57) are meant to show that prosecution witnesses Murlidhar (Ex. 3) Narayan Hivarkar (Ex.4) Bapu Magar (Ex.7) and Narayan Patil of Kalambuti had not gone to Natepute for their business as they assert but were taken to Natepute by the P.S.I. in the bus in which he travelled in the evening on the 23rd December and that witness Ganu Metkari (Ex.21) who is a Panch for the panchanamas at 21-A, 21-B, & 22-B could not have been at Natepute on 24th on which date those panchanamas were drawn and these events took place.

Murlidhar Baloba Rajmane (Ex. 3) has stated that he had gone from Akluj to Natepute in a billock cart of one Tukaram Mihite, which he had hired for taking his 5 bags of Jawari for sale in the weekly bazar at Natepute which he reached early in the morning of 24th and after keeping the Jawari bags in the bazar he went to the motor stand as he had come to know that the Jain Guru was to come there and stood there on the Katta of a hotel and saw the events there and that Narayan Hivarkar was with him. Narayan Hivarkar (Ex.4) supports him and says that he

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had gone to Natepute as he was to go to Lonand that he went to the motor stand at Natepute but as no bus was available for Lonand that time he stopped there at the motor stand and saw the events. Narayan says that he was to go to Lonand for taking on a water-application the signature of one Chimanlal Motichand of Lonand whose land at Bavada in Indapur Taluka had been taken by his father that he then went to Lonand to take the signautre of Chimanlal and took Chimanlal's signature on the water application from the handed over form to his father. He further says that he does not know for what season the water application was and whether his father actually presented it in the Irrigation Sectional office at Bavada. The defence have examined witness Digambar Ghodke (Ex.48) to show that this plea of Narayan is not true as Mr. Ghodke who is a clerk in the Irrigation Office at Bavada says (Ex. 48) that all the water applications for the land of Chimanlal had been received before 23.12.41 Mr. Ghodke does not contend the fact that Chimanlal's land at Bavada are held on lease by Narayan's father. It is however to be noted that Mr. Ghodke has stated this date by referring to a note in the Register and had not got the application in original. Moreover Narayan handed over the application form to his father and does not know whether it was actually handed over to the Irrigation officer by his father, so Mr. Ghodkae's evidence does not conclusively prove that Narayan's story is false and he could not have gone to Natepute that day for going to

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Lonand. Witness Ganesh Keskar (Ex.56) has stated that there two witnesses for the prosecution Murlidhar Rajmane and Narayan Hivarkar were in a bus which arrived at Malsiras from Akluj in the evening of 23rd but it is to be noted that his colleague Ganu Palve (Ex.55) who was then the Talathi at Natepute and who was to go to Natepute that evening and who had gone to the same bus along with Keskar does not mention the presence of Murlidhar Rajmane and Narayan Hivarkar in that bus. These two witnesses Kesar and Palve (Ex. 56 & 55) also state taht prosecution witnesses Balu Magar and Narayan Ramchandra (Ex.7&8) went with the P.S.I. Mr. Deshamukh from Malsiras to Natepute in that bus that they themselves and these two men along with many others had actually got into the bus, but the P.S.I. who came there shortly after words asked the other men who had got into the bus at Malsiras except Balu Magar and Narayan Patil to get down from the bus and in their places he seated his police and then the bus went to Natepute. The Sub-Inspector (Ex.23) denies this fact and say that he does not know if Balu Magar and Narayan Patil travelled in the same bus in which he travelled Balu Magar and Narayan Patil (Ex. 7 & 8) have also emphatically denied the fact the Police Sub-Inspector Mr. Deshamukh had taken them from Malsiras to Natepute in the bus, in which he travelled and say that they had gone there on 23rd for the weekly bazar to be held on the following day. This witness Genu Krishna

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(Ex.55) was the then Talathi of Natepute itself and is a non-jaina and it can not be said that he was or is free from local influences. Witness Keskar (Ex.56) also seems from hisown cross examination to be interested in the first 2 accused. A close perusal of his evidence shows that he is not prepared even to depose to patent facts. This fact coupled with the discrepaney in his evidence and that of Palve (Ex.55) about the presence of Murlidhar Rajmane and Narayan Hivarkar in the same bus creats doubts as to whether the evidence of these witnesses is reliable. There was no particular reason for the S.I. Mr. Deshamukh to have taken Balu Magar and Narayan Patil with him all the way from Malsiras to Natepute.

The two defence witnesses V.K. Deshpande (Ex.51) and B.R. Bhange (Ex.57) are meant to show that prosecution witness Ganu Metkari (Ex.21) could ot have been at Natepute on 24th December 1941 to witness the events at the motor stand and to serve as a panch for the 3 panchanamas at 21-A, 21-B, & 22-A. Ganpati Metkari is a resident of Borgaon. He says (Ex. 21) that he started from Boregaon in the early hours of the morning of 24th on a cycle to go to Natepute to see his sister who was ailing that he reached Akluj at day break, took tea there and then went on to Natepute which he reached at about 9 a.m. and went back the same evening and then had gone to Boregaon factory with which he had dealings. I do not fond anything in the evidence of

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V.K. Deshpande (Ex.51) who is clerk in the Boregaon Sugar factory which clashes with the story of ganu Metkari except the fact that Deshpande says that Ganu repaid to the factory Rs. 18-12-9 and Rs. 33 on 23rd December whereas Ganu says he paid only the forst named amount and that while Deshpande says that Gany paid Rs. 49 to the factory in the evening of 24th Ganu says he did not pay any such amount though he admits to have gone there in the evening of 24th after his return from Natepute Ganu states that he started from his village Boregaon in the early hours of the morning of 24th and therefore his dealings with Boregaon factory on 23rd do not conflict with his story. Similarly he says that he had gone to the factory after 6 p.m. in the evening of 24th after his return from Natepute. Mr. Deshpande also says that these Rs. 49 must have been received by him in the factory office at about 6-15 p.m. Ganu Metkari has stated taht he does not remember what business he did at the factory that evening and so might not remember if he paid these Rs. 49 if he remembered it when he admits that he had gone to the factory that evening. He may also not remember after such a long time the payment of Rs. 33 on 23rd also. So Mr. Deshpande evidence does not materilly affect Ganu Metkarie's story. Bhimrao Bhange (Ex. 57) is another witness for the defence to show that Ganapati Matakari could not be at Natepute on 24th. This witness Bhaimrao (Ex.57) says that he met Ganapati at Borgaon at 1 p.m. on 24th and that Ganapati asked him there to

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arrange to send the Jawari which he had purchased at Malkhambi to Borgaon factory in head loads and then both of them went to Malkhambi and arranged to send the Jawar to Borgaon factory on 24th December. I really wounder why Ganu Metkari should have sought the help of Bhimrao to take Jawari to Borgaon factpry and why witness Bhimrao remembers the date. Its seems from his (of Bhimrao) cross examination that accused No. 1 Shankarrao has some hand in securing the evidence of this witness through one Bapu Kulkarni of Girvi a son of defence witness no. 1 Shankar Kulkarni and that he is giving this evidence under the influence of accused No. 1 to favour him otherwise there is no reason for him to reember the date of the business of engaging coolies for Ganapati if he at all had engaged them.

I this find that the evidence of the defence witnesses to show that events at the motor stand or infront of the Jain temple did not take place at all or that prosecution witness Ganu Metkari was not at Natepute on 24th December 1941 and that the prosecution witnesses Murlidhar Rajmane Narayan Hivarkar, Balu Magar and Narayan Patil (Ex. 3,4,7 & 8) were brought by the S.I. Mr. Deshamukh with him is not reliable.

As against this there is as already shown over whelming evidence on behalf of the prosecution to show that force and violence was used by all the accused at the motor

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stand. This force and violence was used clearly in furtherence of the common object of causing disturbance to the assembly of the Jains lawfully engaged in religious ceremonies and to utter words with the deliberate intentionof wounding the religious of the Jains otherwise there was no reason for the accused for using force or violence.

There are of course some discrepancies in the evidence of some prosecution witnesses on some minor points such as the number of men in the processionor at the point where the Muni joined the main road and as to who beat whom and as to how many of the accused threw eggs at the procession near the motor stand and so on. But in a case like this when the riot begans a state of confusion ensues and each witness is not able to see all facts precisely and such discrepancies are bound to occur. I accordingly hold that the prosecution case as for as the offence under section 147 I.P.C. is concerned is completle established.

Now as regards the offence under section 296 I.P.C. no great discussion is I think necessary in view of the facts already discussed. I have already shown while discussing point No. 2 under section 147 I.P.C. that the prosecution of Jains with 108 Shantisagar Maharaj among them was as assembly lawfully engaged in the performance of a religious ceremony. There has been ample evidence

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as already shown that all the accused showed black flags and began to shout filthy and offendings slogans. as soon as that assembly of the jains came near the motor stand and broke the police cordon and rushed into the procession and malhandled some of the processionists by giving them pushes etc. and also struggled with the police when the police began to take them out and both the accused and the police pushed each other on to the other side of the road. All this did cause obstruction to the assembly and some of the responsible jains members of theprocessions have stated that they had to pouse and to see that their men in theprocession proceeded safely and did not get entangled in any trouble (Ex. 18,39). As regards point No. 3 also i.e. whether the accused caused this obstruction voluntarily and in furtherence of their common object I think no great discussion is called for. It is clear from the facts already discussed that they were acting voluntarily and in furtherence of the common object with which they had come there.

I thus hold that the prosecution case as far as the offence under section 296 is concerned is completely established.

As regards the offence under section 298 I.P.C., also, I think no great discussion is called for in view of the facts already discussed. Almost every witness for the prosecution have stated that as soon as the procession

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of the Jains came there near the motor stand and the culvert on the road going to the Jain temple, the accused began to shout out जैन धर्माचा धिक्कार असो, नागण्या मुनीचा धिक्कार असो, जैन धर्माचा नाश होवो, हांडण्या मुनीचा धिक्कार असो etc. and one or two of the accused began to cry out by bellowing as on Shimga day (बोंब मारती) and some accused threw eggs at the procession when the Jain Muni was in front of them and though the eggs missed to hit the Muni two of the eggs fell on the two of the processionists. The defence of course deny inter to have uttered any of these slogans or to have thrown the eggs. But an already shown, this cannot be accepted they also suggested that the prosecution witnesses have improved their story by adding the slogan जैन धर्माचा नाश होवो to the slogans which they had mentioned before the police. The prosecution evidence in this respect is sufficiently strong and shows that this slogan जैन धर्माचा नाश होवो was also uttered. But even granting that it was not uttered that other slogans and shouting of while the Muni was being taken in processing and throwing of eggs at the Muni or even at the jains. As so many responsible people from the jain community (Ex. 15, 16, 17, 18, 39) have stated that the Jain religious denounces "Hinsa" (Killing of animals) and this throwing of eggs which got broken was certainly a thing offending by itself the religious feeling of the Jains. Similarly these witnesses have stated that the Jains hold this Muni in great reverence. They even went the length of worshipping him like God at the point where he joined

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the main road while coming from Dahigaon. The shouting of such slogans viz. जैन धर्माचा धिक्कार असो, नागण्या मुनीचा धिक्कार असो, जैन धर्माचा नाश होवो, हांडण्या मुनीचा धिक्कार असो the like is sure to wound the religious feelings of the Jain in the assembly or procession. The accused uttered these slogans and made gestures of showing black flags and throwing eggs, in the hearing of and in the sight of the members of the assembly of the Jains. Their intention was clearly to wound the religious feeling of the Jains as they have got a strong hearted for one of the principals of the Jains religion viz. the God and the religious head should move about iv a state of nudity. There is no common object. As regards point No 5 under the circumstances of the case that their intention to wound the religious feelings of the Jains was deliberate. Because they began to shout out these slogans and threw eggs as soon as the procession and the Muni came in front of them and continued doing so, even after the procession had moved further on. This and the fact that they had brought the eggs with them while coming there shows that their intention was deliberate. The defence urged that the accused could not have done all this when according to the procession accused nos. 1 & 2 had assured the P.S.I. that the accused would do nothing beyond displaying black flag. Probably the giving of the assurance might be intentional as otherwise the Police would not have allowed the accused to stop there, if they had disclosed their plans to them.

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I thus find that the prosecution case as far as the offence under - section 298 I.P.C. is concerned is also established beyond a reasonable doubt.

As regards the offence under section 152 or 353 I.P.C. also I think no great discussion is called for. The first point under section 152 I.P.C. is whether the assembly formed by the assembly was an unlawful assembly. I have already shown that it was an unlawful from the facts already discussed and from the evidence of so many prosecution witnesses, it is clear that the Police Sub-Inspector and his subordinate police officers who are unquestionally public servants, endeavors to disperse it by trying to take the accused out of the processionists. There will be no dispute about the fact that in trying to disperse the unlawful assembly the P.S.I and the other police were doing it in the discharge of their public duty and that they were action in the discharge of their were thus endeavouring to disperse that unlawful assembly. Under section 53 of the D.P. Act it is their duty to do so.

There is definite evidence in this case to show that at least accused nos. 1 to 7 & 10 to 14 did assault one of other of the public officers and that all the accused obstructed them in the discharge of their official duty when they broke the police cordon and struggled with them when the police tried to take them out of the processionists. There is no evidence to show that accused

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Nos. 8 & 9 did actually beat any police officers and so I had applied section 149 should have been applied. But in the circumstances of the case I think there is no objection to apply section 35 I.P.C. also to them because that facts of the case show that these two accused had criminal knowledge if not the criminal intention when the other accused assaulted and obstructed the police that such things will happen or should happen. I accordingly hold that the prosecution case as far as the offence under section 152 & 152 read with section 35 I.P.C. is also proved.

I had formed an affirmative charge under section 152 or 535 I.P.C. against the accused because when I framed the charge I was not sure whether the assembly formed by the accused was or was not an unlawful assembly. Now by the accused was an unlawful assembly and so the accused offence in obstructing the police officer falls under section 152 rather than under section 353 I.P.C. Even **supposing for the sake of argument** that the Jains were not lawfully engaged in doing the religious ceremony on a high way (with which proposition I do no agree) still it is beyond doubt that they were taking out a procession which as held in the cased already quoted by various High Court they were entitled to do and the accuses action in obstructing them by use or criminal force would still render their assembly an unlawful assembly under clause 5 of section 141 I.P.C. But I

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definitely hold that the procession in question was a religious ceremony and that the Jains were lawfully engaged in performing it.

As I have held that the accused offence in obstructing the police officers falls under section 152 I.P.C. I do not propose to deal with the points under section 353 I.P.C.

Before concluding I wish to deal with one or two points raised by the defence viz. that the panchanamas at 21-A, 21-B, 22-A are faulty and as such false. They contend that for the panchanamas at 21-A there must have been originally only two panchas Narayan Aba Salunkhe and Madhav Harji Pandhare and they must have been numbered 1 & 2 and that the names of Narayan Mahadu Hivarkar and Ganapat Tukaram Metkari (now numbered 2 & 4) must have been added subsequently and the original figure of 2 corrected into 3. Similarly the signature of narayan Mahadu Hivarkar must have been taken subsequently on the panchanama at Ex.21-B as his name does not appear at the top of the panchanama (Ex. 21-B) and that similarly the signature of Ganu Methakari must have been subsequently on the panchanama at Ex. 22-A as his name also does not appear at the top. The panch witness in this case have of course deposed that all the panchas were present and signed the panchanams on the spot. But from a

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perusal of the panchanamas at Ex. 21-A, 21-B, 22-A. I think that there is some force in what the defence says but at the time I think that this fact need not detract from the evidentiary value of these panchanamas because the other panchas Narayan Salunkhe and Madhav Pandhare are there and the defence have themselves got the execution of these panchanamas proved by questioning the panch Madhav Pandhare (Ex. 6) who was unquestionally present on the scene of the offence and present the panchanamas I can not imagine why the police have added these additional names in the panchanamas and taken their signatures. I however do not think that the Sub-Inspector would dare to make absolutely false panchanamas as the defence allege about facts which took place on that open space in broad day light.

The defence also contend that the Sub-Inspector Mr. Deshamukh on getting the application at Ex. 2-A should not have allowed the procession particularly when the non-jains had already applied to the Sub-Divisional Magistrate and Taluka Magistrate requesting them to take action under section 144 Cri. P. Code before hand on 30-11-41 and when one of those applications had already been sent to him and that he should have at least got the Taluka Magistrate orders. Mr. Deshamukh explains this by saying that on receipt of the application dated 30-11-41 (Ex. 23-C) he and the Mamlatdar were trying

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to effect a compromise between the two parties and men from both parties had been called up by the Mamlatdar and so he thought that matters would not assure such a serious form. He also says that on getting this application at 2-A he had to allow to jain Muni to visit Natepute and agree to make the necessary bandobast as the time was very short and he did so as he never thought that the matters would assure such a serious for. He further says that he however tried to see the Taluka Magistrate but could not do so as the Magistrate was ill and as the necessary Bandobast. This can be called an error of judgement and wrong conception of the position in good faith. There is no reason to assume that the Sub-Inspector was not acting in good faith when he consented to the Jain Muni in going to Natepute in getting the application at 2-A and the accused action can not be excused on that score. Mr. Dehamukh's spurious might look into this matter if they so wish.

I also wish to observe that the police investigation in this case has been rather carelessly done in a hurried manner. Almost all the statement seems to have been taken on the 24th only. The Sub-Inspector admits that some of them were written by his writer constable, probably as a result of this the statement of many of the witnessed examined by him do not contain mention of accused Pralhad having held the P.S.I. by his waist or of the events in front of the Jain temple, though almost all

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of the prosecution witnesses assert that Pralhad Bharte gave the Sub-Inspector two blows with a stick and accused Shankar had held the P.S.I. by his waist and eggs were thrown even in front of the Jain temple. Of course an Investigating-Police Officer is not required by him in the course if his investigation but the omission of such an important event as beating the P.S.I. himself leaves room for the defence and -rightly- to say that the prosecution witnesses have improved their story. In the present case however, the finding in respect of offence committed by the accused is not affected by the addition or omission of these items. Their other doings near the motor stand are as can be seen from the facts already discussed, sufficient to constitute the offences which have been found to be established. I have also refused to take into account the finding of the dead rat on the road neat the shops of one Hingangaonkar and of Ghogardare Bros. The prosecution probably wanted to show from the fact that it was found on the road near the shop of Ghogardare brothers that accused No. 1 had some hand in it. But in the absence of any of the accused with the throwing of the rat there. It is quite possible that the dead rat might have been the own there by any one else in the normal course. Some capital was also sought to be made out of the fact that the second procession of the third Muni was not at all referred to by the prosecution. The prosecution had no reason to refer to it as nothing untoward had taken place inrespect of it.

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The defence also seemed to suggest from the fact that after the procession had gone from the motor from the motor-stand towards the Jain temple, the P.S.I. took tea in a hotel nearly that nothing untoward had happened there and the P.S.I. was in a quite good mood till the incident about his beating accused Pralhad took place and that because he beat Pralhad for nothing and was afraid of criminal action against him, he has setup this story just to screen his own misdeed. I have already shown that no reason had been shown why the P.S.I. should at once be rough with Pralhad and beaten him as the defence allege. But even supposing that the defence contention that the P.S.I. beat Pralhad for nothing is true. I can not imagine nor have the defence enlighten us on the point why the P.S.I. should think of setting up a false story against all the accused. He would have tried 'to manufacture a false case against Pralhad only, which he could have done more easily.

If also appears from the Sub-Inspector's evidence that there were slight injuries on the persons of accused Nos. 4 & 6 when they were arrested that he asked them if they would like to be treated for them but they told him that they did not want any treatment for them. These injuries might be due to the use of their battons by the Police in trying to control the accused. The Head Constable sultan Hussain (Ex. 1 says he had allowed the use of battons. The Police Sub-Inspector has of course not be able to

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locate the constable or Head constable who used these battons against these accused. The us of some slight beating by the battons on such occasions is incvitable.

I accordingly convict all the accused of the offences under sections 147, 296 & 298 I.P.C. and also accused Nos. 1 to 7 and 10 to 14 of the offence under Section 152 I.P.C. and accused Nos. 8 & 9 of the offence under Section 152 read with section 35 I.P.C.

The question of the sentences to be passed on these accused requires careful consideration. Accused No. 1 is said to be a very rich and influential man. Accused Nos. 2 & 3 also seem to be men os status. But at the same they seem to be the leaders of the statement at 24-A, to be taking active part in the anti-Jain Muni movement and as such they deserve more severe sentences. I accordingly sentence that various accused under different sections as under :-

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Accused	Sec. 147.	Sec 296	S. 298	S. 152
No. 1, 2 & 3 each	3 months R.I. and Rs. 100/- fine or indefault to suffer further R.I. for 1 month	1 Months R.I.	1 Months R.I. All substantive sentences to run concurcntly	3 Months. R.I.
Nos. 4 to 7 & 10,11,12 each	2 Months R.I.	1 Months R.I. All substantive sentences to run concurcntly	1 Months R.I.	2 Months R.I.
Nos. 8 & 9 each	2 months R.I.	1 months R.I.	1 months R.I. All substantive sentences to run concurcntly	2 months R.I. Under Sec.152 with Sec. 35 I.P.

Accused No 13 Vasant Gopal Bharte gives his age to be 13 through by appearance he seems to be 17 similarly accused No 14 Madhav Sambhu Teli claims to be 16 through by appearance he seems to be 17. In any case they are yet young boys and seem to have been led away by enthusiasm. They have no previous conviction to their record. I am inclined therefore to give them the benefit

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of section 562 Cri. P.C. and direct that they be released on probation of good conduct if they enter into a bond of Rs. 100/- with one surely for Rs. 100/- to appear and to receive dentence when ever called upon during a period of one year and in the meantime to keep the peace and be of good behaviour (section 562 Cri. P.C.) I acquit all the accused of the offence under section 353 I.P.C.

The flags and sticks and the pieces of broken eggs before the court to be destroyed after the period of appeal is over (Section 517 Cri. P. Code)

Pandharpur
27th February 1943

Sd/- B.J. Phadke
Resident Magistrate
F.C. Pandharpur.

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RESIDENT MAGISTRATE, FIRST CLASS
PANDHARPUR

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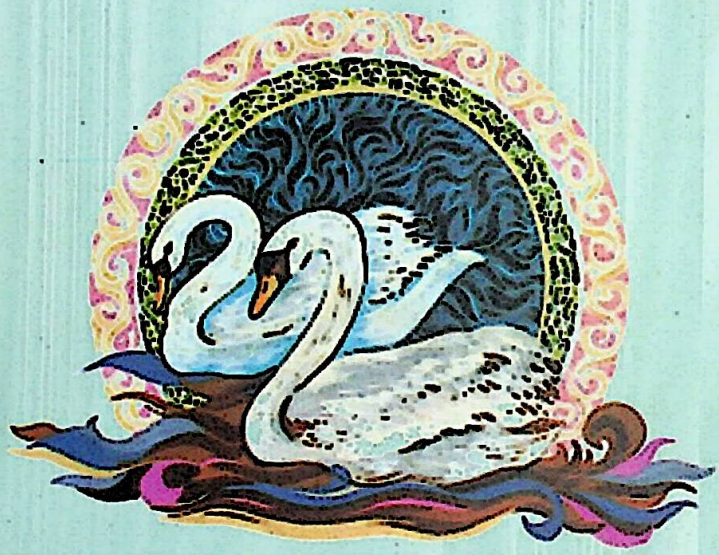

नीर-क्षीर न्याय का प्रतीक हंस पक्षी

NEER-KSHEER NYAY KA PRATIK HANS PAKSHI

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